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Docket No: 33500-005
File No: 20594

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
William Kitchen et. al.

Serial No. 09/034,561

Filed: March 3, 1998:

For: ELECTRONIC BILL PROCESSING

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: Group Art Unit: 2761
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: Examiner:
: Unassigned

PETITION UNDER 37 CFR 47(a)

Honorable Assistant Commissioner
of Patents
Washington, D. C. 20231

Sir:

This Petition is filed concurrently with a response to the Notice to File Missing Parts of Application which issued on June 5, 1998. The undersigned hereby Petitions the Commissioner under 37 CFR 47(a) to accept, and proceed with the examination of, the above referenced Application notwithstanding the unavailability or refusal of certain of the joint inventors to execute the Application. In support of the Petition, it is respectfully submitted that:

1. The above referenced utility application was filed under 37 CFR 1.53 on March 3, 1998 as acknowledged in the Filing Receipt and Notice to File Missing Parts of Application dated June 5, 1998.

2. As set forth in the Declaration and Power of Attorney filed herewith, the inventors on the above referenced application are William Kitchen, Ginger Moses, Ralph Au, Clarence Bringardner and Kenneth Bradley.

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3. The Declaration and Power of Attorney filed herewith has been executed by named inventors William Kitchen, Ginger Moses, and Ralph Au on a Declaration and Power of Attorney document also naming Clarence Bringardner and Kenneth Bradley as inventors. Accordingly, inventors William Kitchen, Ginger Moses, Ralph Au have signed the Application on their own behalf as well as on behalf of non-signing inventors Clarence Bringardner and Kenneth Bradley.

4. As evidenced by the Declaration of Sharon Hand submitted herewith, a copy of the Application, Declaration and Power of Attorney have been forwarded on June 23, 1998 via UPS and again on August 26, 1998 via the U.S. Postal Service (certified mail return receipt requested) to Clarence Bringardner at his last know address and to Kenneth Bradley at his last know address.

5. As also evidenced by the Declaration of Sharon Hand, the materials forwarded by UPS to Mr Bringardner have been returned as undeliverable by UPS. The materials forwarded by the U.S. Postal Service to Mr Bringardner have not been returned as undeliverable. However, the certification of delivery/non-delivery (i.e. Form 3811) has not been returned as yet by the U.S. Postal Service. Accordingly, a trace was placed on the certification of delivery/non-delivery on November 18, 1998. This Petition will be supplemented and a copy of the certification of delivery/non-delivery (if available) will be submitted after the U.S. Postal Service completes its trace of the certification. Mr. Bringardner has not contacted Ms. Hand in connection with this application. Further, the executed Declaration and Power-of-Attorney documents included as part of the materials forwarded by the U.S. Postal Service to Mr. Bringardner have not been returned to Ms. Hand.

6. As also evidenced by the Declaration of Sharon Hand, the materials forwarded by UPS and the U.S. Postal Service to Mr Bradley have been delivered. Mr. Bradley has not contacted Ms. Hand in connection with this application. Further, the executed Declaration and Power-of-Attorney documents included as part of the materials forwarded to Mr. Bradley have not been returned to Ms. Hand.

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7. As evidenced by the attached Declaration of Sheila Foxx, no Declaration and Power of Attorney executed by either Mr. Bradley or Mr. Bringardner in connection with the above referenced case has been received by the undersigned's firm either directly, indirectly through the undersigned's prior firm (Jenkins & Gilchrist), or otherwise.

8. It is respectfully submitted that (i) a diligent effort has been made to find and reach joint inventors Bradley and Bringardner and to obtain their respective signatures on the above referenced Application; (ii) inventor Bringardner either cannot be found or reached or, if the results of the trace currently being performed by the U.S. Postal Service indicate that inventor Bringardner did receive the Application, he has neither returned the executed Application nor indicated any intention to do so and in such case should be deemed to have refused to execute the Application; (iii) inventor Bradley has received the Application but has neither returned the executed Application nor indicated any intention to do so, therefore inventor Bradley should be deemed to have refused to execute the Application; (iv) all available joint inventors (i.e. William Kitchen, Ginger Moses, and Ralph Au) have executed the Application on their own behalf and on behalf of the non-signing inventors (i.e. Clarence Bringardner and Kenneth Bradley).

9. In view of the above, it is respectfully requested that the Commissioner find that inventor Bringardner is unavailable and/or has refused to execute the above referenced Application, that inventor Bradley is unavailable and/or has refused to execute the above referenced Application, and that the Application can be made in the name of the joint inventors who have executed the Application on their own behalf and on behalf of the non-signing inventors Bringardner and Bradley.

In summary, it is respectfully submitted that the mandates of 37 CFR 47(a) have been fulfilled and the above referenced application is acceptable notwithstanding non-execution by two of the five joint inventors. Accordingly it is respectfully requested that this Petition be GRANTED and prosecution of the Application be allowed to proceed.

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It is respectfully requested that the undersigned be contacted by telephone at the below listed local telephone number, in order to expedite resolution of any issues, or if any comments, questions, or suggestions arise in connection with herewith.

A check in the amount of \$130.00 to cover the Petition Fee under 37 CFR 1.17(h) is enclosed herewith. Please charge any shortage in fees due in connection with the filing of this paper to Deposit Account No. 12-0429, and please credit any excess fees to such deposit account.

Respectfully submitted,
LALOS & KEEGAN

By: 

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November 25, 1998